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OFFICE OF THE STATE PUBLIC DEFENDER
THOMAS G. BECKER, STATE PUBLIC DEFENDER

INDIGENT DEFENSE ADVISORY COMMISSION

STATE OF IOWA INDIGENT DEFENSE ADVISORY COMMISSION

Third Report December 6, 2006

The Indigent Defense Advisory Commission had its annual meeting on July 20, 2006. Voting members present were Representative Richard Anderson (appearing by telephone), Joseph Cahill, Senator Gene Fraise, and Maria Ruhtenberg. State Public Defender Tom Becker presided as non-voting chair. Isaiah McGee attended as a member of the public at the invitation of Mr. Becker, as Mr. McGee had been nominated to the Governor's Office for appointment to voting member position that has been vacant since Sherryl Williams declined reappointment. Governor Vilsack appointed Mr. McGee to the Commission on October 5, 2006, and he has considered this report as a voting member.

The Commission gratefully acknowledges the participation of the Iowa State Bar Association in providing information and recommendations to the Commission. The comments of ISBA Executive Director Dwight Dinkla, outgoing Chair of the Criminal Law Section Al Willett, new Chair of the Criminal Law Section Leon Spies (by letter), and Legislative Liaison Jenny Tyler were carefully considered by the Commission in fulfilling its statutory duty to make recommendations concerning assigned counsel fee rates and per-case fee limits in indigent defense cases. *See* IOWA CODE § 13B.2A. The Commission also appreciates the feature on the annual meeting that appeared in a recent edition of *The Iowa Lawyer* and thanks ISBA Communications Director Steve Boeckman for the article.

By law, the Commission must file a written report at least every three years. *Id.* The Commission's two previous reports were filed December 9, 2002, and December 15, 2003. Accordingly, the Commission is due to file a report this year. This requirement coincides with a significant development during the 2006 session of the General Assembly, the amendment of Iowa Code section 815.7 to raise assigned counsel fee rates. Much of the July 20th meeting focused on the impact of this rate raise and whether additional action was appropriate.

Prior to the 2006 amendment to section 815.7, the hourly fee rates were \$60 for Class A felonies, \$55 for Class B felonies, and \$50 for all other cases. The 2006 amendment raised the hourly rates by \$10 for some cases and \$5 for the rest. The hourly rates now are \$65 for Class A felonies, \$60 for all other felonies and misdemeanors, and \$55 for all other cases.

The Commission supports the Bar Association recommendation for another \$5 per hour increase for those cases that did not get a \$10 per hour increase in the last legislative action. This would set the hourly rates as \$70 for Class A felonies, \$65 for Class B felonies, and \$60 for all other cases. The Commission believes this is a matter of fairness for attorneys who focus their practice on the types of cases not covered by this year's \$10 per hour increase, in particular those whose primary work is in juvenile court.

In its initial report in 2002 recommending a fee rate increase, the Commission cited the need to maintain private attorney participation in indigent defense, keep court appointment fees apace with law office overhead costs, and keep faith with attorneys who have dedicated a significant part of their practice to representing indigents. The Commission echoed these reasons in its 2003 report. These same factors support equalizing the fee rate increase passed this year for all indigent cases.

The Commission notes that revenue projections discussed at the Commission's annual meeting would permit the increase we recommend. The Commission acknowledges, as it always has, that availability of appropriations is a critical factor for the General Assembly's consideration in deciding whether to adopt a fee rate increase.

Concerning the per-case fee limits, which the Iowa Code requires the State Public Defender to set (*see* IOWA CODE § 13B.4(4)(a)), the Commission recommends the State Public Defender increase the limits in response to the 2006 increase in the hourly fee rates. The Iowa Code requires the State Public Defender to consider several factors in setting fee limits, including public input. *Id.* The State Public Defender will publish notice of proposed administrative rules, including fee limits, and invite public comment in accordance with chapter 17A of the Code.

All voting members of the Commission concur in this report. Electronic facsimile signatures are below. Original signatures are on file.

Respectfully Submitted,

Thomas G. Becker

Thomas G. Becker
Non-voting Chair

Richard T. Anderson

Richard T. Anderson
Member

Joseph R. Cahill

Joseph R. Cahill
Member

Gene Fraise

Gene Fraise
Member

Isaiah McGee

Isaiah McGee
Member

Maria Ruhtenberg

Maria Ruhtenberg
Member